

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2011-221**

NEAL L. BRITTAIN

APPELLANT

**V. FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER**

**CABINET FOR HEALTH AND FAMILY SERVICES,
J. P. HAMM, APPOINTING AUTHORITY**

APPELLEE

** ** * ** *

This matter came on for a pre-hearing conference on November 10, 2011, at 11:00 a.m., ET, at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Boyce A. Crocker, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Neal L. Brittain, was present at the pre-hearing conference and was not represented by legal counsel. The Appellee Cabinet for Health and Family Services was present and represented by the Hon. Catherine York.

BACKGROUND

1. This appeal was filed with the Personnel Board on October 3, 2011. The Appellant alleged Other Penalization, specifically, “wrongful use of employee accrued leave.”

2. The Appellant refers to two specific instances when he contends he was improperly charged with personal leave time. The first is the refusal of the agency to grant Court Leave for a period of 3.25 hours when the Appellant complied with a subpoena from the Personnel Board to appear to testify on August 23, 2011. The Appellant alleged he was instead required to use 3.25 hours of annual leave. The Appellant contends this was improper and violates the regulation regarding court leave, and as relief, seeks to have his leave properly restored to his annual leave, changed to court leave, and for the Personnel Board to issue a directive about the proper interpretation or application of the court leave regulation.

3. The Appellant also contends he was required to use 1.25 hours of annual leave on August 19, 2011. The Appellant states the agency has failed to explain its action despite his request and that the 1.25 hours should be restored to his annual leave account.

4. This case was pending for several months during which time the parties exchanged discovery and prepared for an evidentiary hearing.

5. The Appellee filed a Motion to Dismiss the appeal as moot because it agreed to credit the Appellant with the following (upon submission of a corrected time sheet): 8/19 – 8 hours of regular time; 8/23 – 4.75 hours of regular time and 3.25 court leave; and, 8/25 – 3.5 hours of regular time and 4.5 hours of court leave.

6. The Appellant would not agree to settle or withdraw his appeal. Nonetheless, in a telephone conference involving counsel for the Appellee and Mark A. Sipek, Personnel Board Executive Director, the Appellant acknowledged the Appellee had provided him with all the relief he was entitled to on this appeal.

FINDINGS OF FACT

1. The Appellant, Neal L. Brittain, filed his appeal with the Personnel Board on October 3, 2011, alleging he was penalized when he was required to use leave time instead of work time or court leave.

2. While the appeal was pending, the Appellee agreed to credit the Appellant with all disputed leave upon submission of a corrected time sheet to show the following: 8/19 – 8 hours of regular time; 8/23 – 4.75 hours of regular time and 3.25 court leave; and, 8/25 – 3.5 hours of regular time and 4.5 hours of court leave. The Appellee filed a Motion to Dismiss the appeal as moot.

3. While the Appellant would not agree to dismiss or settle his appeal, he acknowledged that the Appellee had offered him all the relief to which he was entitled.

4. The Hearing Officer finds that the appeal is moot as the Appellee has granted the Appellant all the relief he has requested.

CONCLUSION OF LAW

1. Based upon the Findings of Fact, the Hearing Officer concludes as a matter of law that the Appellee has provided the Appellant with all the relief he has requested in the above-referenced case.

2. Pursuant to KRS 18A.095(18)(a), “The Board may deny any appeal after a preliminary hearing if it lacks jurisdiction to grant relief.” In the above-referenced case, both parties have acknowledged that the Appellee has provided the Appellant all the relief to which he is entitled. There is no additional relief the Personnel Board may grant the Appellant in this case. For this reason, the Hearing Officer concludes the appeal should be dismissed as moot.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **NEAL L. BRITTAIN V. CABINET FOR HEALTH AND FAMILY SERVICES, (APPEAL NO. 2011-221)** be **DISMISSED**.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within five (5) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

Any document filed with the Personnel Board shall be served on the opposing party.

The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

Each party has thirty (30) days after the date the Personnel Board issues a Final Order in which to appeal to the Franklin Circuit Court pursuant to KRS 13B.140 and KRS 18A.100.

ISSUED at the direction of **Hearing Officer Mark A. Sipek** this _____ day of January, 2013.

KENTUCKY PERSONNEL BOARD

MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Catherine York
Mr. Neal L. Brittain